

111TH CONGRESS
1ST SESSION

S. 456

To direct the Secretary of Health and Human Services, in consultation with the Secretary of Education, to develop guidelines to be used on a voluntary basis to develop plans to manage the risk of food allergy and anaphylaxis in schools and early childhood education programs, to establish school-based food allergy management grants, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 23, 2009

Mr. DODD (for himself, Mr. ALEXANDER, Mr. WHITEHOUSE, Mr. LAUTENBERG, and Mr. KERRY) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To direct the Secretary of Health and Human Services, in consultation with the Secretary of Education, to develop guidelines to be used on a voluntary basis to develop plans to manage the risk of food allergy and anaphylaxis in schools and early childhood education programs, to establish school-based food allergy management grants, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Food Allergy and Ana-
3 phylaxis Management Act of 2009”.

4 **SEC. 2. DEFINITIONS.**

5 In this Act:

6 (1) **EARLY CHILDHOOD EDUCATION PRO-**
7 **GRAM.**—The term “early childhood education pro-
8 gram” means—

9 (A) a Head Start program or an Early
10 Head Start program carried out under the
11 Head Start Act (42 U.S.C. 9831 et seq.);

12 (B) a State licensed or regulated child care
13 program or school; or

14 (C) a State prekindergarten program that
15 serves children from birth through kinder-
16 garten.

17 (2) **ESEA DEFINITIONS.**—The terms “local
18 educational agency”, “secondary school”, “elemen-
19 tary school”, and “parent” have the meanings given
20 the terms in section 9101 of the Elementary and
21 Secondary Education Act of 1965 (20 U.S.C. 7801).

22 (3) **SCHOOL.**—The term “school” includes pub-
23 lic—

24 (A) kindergartens;

25 (B) elementary schools; and

26 (C) secondary schools.

1 (4) SECRETARY.—The term “Secretary” means
2 the Secretary of Health and Human Services.

3 **SEC. 3. ESTABLISHMENT OF VOLUNTARY FOOD ALLERGY**
4 **AND ANAPHYLAXIS MANAGEMENT GUIDE-**
5 **LINES.**

6 (a) ESTABLISHMENT.—

7 (1) IN GENERAL.—Not later than 1 year after
8 the date of enactment of this Act, the Secretary, in
9 consultation with the Secretary of Education,
10 shall—

11 (A) develop guidelines to be used on a vol-
12 untary basis to develop plans for individuals to
13 manage the risk of food allergy and anaphylaxis
14 in schools and early childhood education pro-
15 grams; and

16 (B) make such guidelines available to local
17 educational agencies, schools, early childhood
18 education programs, and other interested enti-
19 ties and individuals to be implemented on a vol-
20 untary basis only.

21 (2) APPLICABILITY OF FERPA.—Each plan de-
22 scribed in paragraph (1) that is developed for an in-
23 dividual shall be considered an education record for
24 the purpose of the Family Educational Rights and
25 Privacy Act of 1974 (20 U.S.C. 1232g).

1 (b) CONTENTS.—The voluntary guidelines developed
2 by the Secretary under subsection (a) shall address each
3 of the following, and may be updated as the Secretary de-
4 termines necessary:

5 (1) Parental obligation to provide the school or
6 early childhood education program, prior to the start
7 of every school year, with—

8 (A) documentation from their child’s physi-
9 cian or nurse—

10 (i) supporting a diagnosis of food al-
11 lergy, and any risk of anaphylaxis, if appli-
12 cable;

13 (ii) identifying any food to which the
14 child is allergic;

15 (iii) describing, if appropriate, any
16 prior history of anaphylaxis;

17 (iv) listing any medication prescribed
18 for the child for the treatment of anaphy-
19 laxis;

20 (v) detailing emergency treatment
21 procedures in the event of a reaction;

22 (vi) listing the signs and symptoms of
23 a reaction; and

1 (vii) assessing the child's readiness for
2 self-administration of prescription medica-
3 tion; and

4 (B) a list of substitute meals that may be
5 offered to the child by school or early childhood
6 education program food service personnel.

7 (2) The creation and maintenance of an indi-
8 vidual plan for food allergy management, in con-
9 sultation with the parent, tailored to the needs of
10 each child with a documented risk for anaphylaxis,
11 including any procedures for the self-administration
12 of medication by such children in instances where—

13 (A) the children are capable of self-admin-
14 istering medication; and

15 (B) such administration is not prohibited
16 by State law.

17 (3) Communication strategies between indi-
18 vidual schools or early childhood education programs
19 and providers of emergency medical services, includ-
20 ing appropriate instructions for emergency medical
21 response.

22 (4) Strategies to reduce the risk of exposure to
23 anaphylactic causative agents in classrooms and
24 common school or early childhood education program
25 areas such as cafeterias.

1 (5) The dissemination of general information on
2 life-threatening food allergies to school or early
3 childhood education program staff, parents, and chil-
4 dren.

5 (6) Food allergy management training of school
6 or early childhood education program personnel who
7 regularly come into contact with children with life-
8 threatening food allergies.

9 (7) The authorization and training of school or
10 early childhood education program personnel to ad-
11 minister epinephrine when the nurse is not imme-
12 diately available.

13 (8) The timely accessibility of epinephrine by
14 school or early childhood education program per-
15 sonnel when the nurse is not immediately available.

16 (9) The creation of a plan contained in each in-
17 dividual plan for food allergy management that ad-
18 dresses the appropriate response to an incident of
19 anaphylaxis of a child while such child is engaged in
20 extracurricular programs of a school or early child-
21 hood education program, such as non-academic out-
22 ings and field trips, before- and after-school pro-
23 grams or before- and after-early child education pro-
24 gram programs, and school-sponsored or early child-

(10) Maintenance of information for each administration of epinephrine to a child at risk for anaphylaxis and prompt notification to parents.

(11) Other elements the Secretary determines necessary for the management of food allergies and anaphylaxis in schools and early childhood education programs.

(c) RELATION TO STATE LAW.—Nothing in this Act or the guidelines developed by the Secretary under subsection (a) shall be construed to preempt State law, including any State law regarding whether students at risk for anaphylaxis may self-administer medication.

15 SEC. 4. SCHOOL-BASED FOOD ALLERGY MANAGEMENT
16 GRANTS.

(a) IN GENERAL.—The Secretary may award grants to local educational agencies to assist such agencies with implementing voluntary food allergy and anaphylaxis management guidelines described in section 3.

21 (b) APPLICATION.—

(1) IN GENERAL.—To be eligible to receive a grant under this section, a local educational agency shall submit an application to the Secretary at such

1 time, in such manner, and including such informa-
2 tion as the Secretary may reasonably require.

3 (2) CONTENTS.—Each application submitted
4 under paragraph (1) shall include—

5 (A) an assurance that the local educational
6 agency has developed plans in accordance with
7 the food allergy and anaphylaxis management
8 guidelines described in section 3;

9 (B) a description of the activities to be
10 funded by the grant in carrying out the food al-
11 lergy and anaphylaxis management guidelines,
12 including—

13 (i) how the guidelines will be carried
14 out at individual schools served by the
15 local educational agency;

16 (ii) how the local educational agency
17 will inform parents and students of the
18 guidelines in place;

19 (iii) how school nurses, teachers, ad-
20 ministrators, and other school-based staff
21 will be made aware of, and given training
22 on, when applicable, the guidelines in
23 place; and

24 (iv) any other activities that the Sec-
25 retary determines appropriate;

1 (C) an itemization of how grant funds re-
2 ceived under this section will be expended;

3 (D) a description of how adoption of the
4 guidelines and implementation of grant activi-
5 ties will be monitored; and

6 (E) an agreement by the local educational
7 agency to report information required by the
8 Secretary to conduct evaluations under this sec-
9 tion.

10 (c) USE OF FUNDS.—Each local educational agency
11 that receives a grant under this section may use the grant
12 funds for the following:

13 (1) Purchase of materials and supplies, includ-
14 ing limited medical supplies such as epinephrine and
15 disposable wet wipes, to support carrying out the
16 food allergy and anaphylaxis management guidelines
17 described in section 3.

18 (2) In partnership with local health depart-
19 ments, school nurse, teacher, and personnel training
20 for food allergy management.

21 (3) Programs that educate students as to the
22 presence of, and policies and procedures in place re-
23 lated to, food allergies and anaphylactic shock.

24 (4) Outreach to parents.

1 (5) Any other activities consistent with the
2 guidelines described in section 3.

3 (d) DURATION OF AWARDS.—The Secretary may
4 award grants under this section for a period of not more
5 than 2 years. In the event the Secretary conducts a pro-
6 gram evaluation under this section, funding in the second
7 year of the grant, where applicable, shall be contingent
8 on a successful program evaluation by the Secretary after
9 the first year.

10 (e) LIMITATION ON GRANT FUNDING.—The Sec-
11 retary may not provide grant funding to a local edu-
12 cational agency under this section after such local edu-
13 cational agency has received 2 years of grant funding
14 under this section.

15 (f) MAXIMUM AMOUNT OF ANNUAL AWARDS.—A
16 grant awarded under this section may not be made in an
17 amount that is more than \$50,000 annually.

18 (g) PRIORITY.—In awarding grants under this sec-
19 tion, the Secretary shall give priority to local educational
20 agencies with the highest percentages of children who are
21 counted under section 1124(c) of the Elementary and Sec-
22 ondary Education Act of 1965 (20 U.S.C. 6333(c)).

23 (h) MATCHING FUNDS.—

24 (1) IN GENERAL.—The Secretary may not
25 award a grant under this section unless the local

1 educational agency agrees that, with respect to the
2 costs to be incurred by such local educational agency
3 in carrying out the grant activities, the local edu-
4 cational agency shall make available (directly or
5 through donations from public or private entities)
6 non-Federal funds toward such costs in an amount
7 equal to not less than 25 percent of the amount of
8 the grant.

9 (2) DETERMINATION OF AMOUNT OF NON-FED-
10 ERAL CONTRIBUTION.—Non-Federal funds required
11 under paragraph (1) may be cash or in kind, includ-
12 ing plant, equipment, or services. Amounts provided
13 by the Federal Government, and any portion of any
14 service subsidized by the Federal Government, may
15 not be included in determining the amount of such
16 non-Federal funds.

17 (i) ADMINISTRATIVE FUNDS.—A local educational
18 agency that receives a grant under this section may use
19 not more than 2 percent of the grant amount for adminis-
20 trative costs related to carrying out this section.

21 (j) PROGRESS AND EVALUATIONS.—At the comple-
22 tion of the grant period referred to in subsection (d), a
23 local educational agency shall provide the Secretary with
24 information on how grant funds were spent and the status

1 of implementation of the food allergy and anaphylaxis
2 management guidelines described in section 3.

3 (k) SUPPLEMENT, NOT SUPPLANT.—Grant funds re-
4 ceived under this section shall be used to supplement, and
5 not supplant, non-Federal funds and any other Federal
6 funds available to carry out the activities described in this
7 section.

8 (l) AUTHORIZATION OF APPROPRIATIONS.—There is
9 authorized to be appropriated to carry out this section
10 \$30,000,000 for fiscal year 2010 and such sums as may
11 be necessary for each of the 4 succeeding fiscal years.

12 **SEC. 5. VOLUNTARY NATURE OF GUIDELINES.**

13 (a) IN GENERAL.—The food allergy and anaphylaxis
14 management guidelines developed by the Secretary under
15 section 3 are voluntary. Nothing in this Act or the guide-
16 lines developed by the Secretary under section 3 shall be
17 construed to require a local educational agency to imple-
18 ment such guidelines.

19 (b) EXCEPTION.—Notwithstanding subsection (a),
20 the Secretary may enforce an agreement by a local edu-
21 cational agency to implement food allergy and anaphylaxis
22 management guidelines as a condition of the receipt of a
23 grant under section 4.

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